

NEW MEXICO WILDERNESS COALITION

IBLA 92-13

Decided April 20, 1994

Appeal from a decision of the Albuquerque District Manager, Bureau of Land Management, dismissing protests of the approval of the El Malpais National Conservation Area General Management Plan. 8300 (017).

Reversed.

1. Environmental Policy Act--Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Land-Use Planning--National Environmental Policy Act of 1969: Environmental Statements

BLM Manual § 1601.09 requires that BLM prepare a resource management plan to fulfill a congressional requirement for a land-use plan, as set forth in legislation establishing a national conservation area. A resource management plan is considered a major Federal action significantly affecting the quality of the human environment and, as such, is properly accompanied by an environmental impact statement.

APPEARANCES: Nicholas F. Persampieri, Esq., Albuquerque, New Mexico, for appellant; Gayle E. Manges, Esq., Field Solicitor, Southwest Region, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

The New Mexico Wilderness Coalition (NMWC) has appealed from a decision of the Albuquerque District Manager, Bureau of Land Management (BLM), dated May 24, 1991, dismissing protests 1/ of the approval of the El Malpais National Conservation Area General Management Plan (GMP).

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1/ Protests were also filed by Judith Bishop, Jim Fish, Jan Cummings, and the New Mexico Wilderness Study Committee. Appeals by these protestants were dismissed by order of the Board dated Mar. 4, 1994. This order was preceded by an order dated Jan. 12, 1994, calling on protestants to show cause why their appeals should not be dismissed for want of a representative authorized to practice before the Department.

The GMP was approved by the New Mexico State Director in January 1991. It was prepared in response to section 501, P.L. 100-225, 101 Stat. 1543-44, 16 U.S.C. § 460uu-41 (1988), which required the Secretary of the Interior to develop separate "general management plans" for the El Malpais National Conservation Area (NCA) and the El Malpais National Monument. The El Malpais NCA was established by Congress to protect approximately 262,690 acres in western New Mexico containing the La Ventana Natural Arch and other "unique and nationally important geological, archeological, ecological, cultural, scenic, scientific, and wilderness resources of the public lands" surrounding Grants Lava Flows. Id. BLM is to administer the El Malpais NCA pursuant to the GMP at issue. The National Park Service administers the El Malpais National Monument. The GMP prepared by BLM was accompanied by a record of decision and finding of no significant impact (FONSI) approved by the Rio Puerco Resource Area Manager in January 1991.

NMWC protested the GMP because BLM did not complete an environmental impact statement (EIS) in connection with the GMP. "This plan outlines numerous development plans for structures, rails, parking areas and other recreation/visitor accommodation actions, as well as management for support of grazing," appellant stated. "Considered individually or together, the courses of action chosen and their implementation will necessarily have significant impacts on the environment." NMWC also objected to BLM's emphasis on recreation and its "lip service" to the protection of natural resources. Lastly, NMWC protested the "process" of public involvement, arguing, inter alia, that a 30-day comment period for major planning documents is not enough (Mar. 29, 1991, letter from NMWC to Al Albee, BLM Area Manager, at 1-2).

By a decision dated May 24, 1991, the Albuquerque District Manager responded to the protests of NMWC and others. The decision explained that an evaluation of the significance of impacts must consider both context and intensity. Planned recreational developments in the El Malpais NCA will amount to less than one-tenth of 1 percent of the total area (Decision at 2). On both an individual and cumulative basis, the impacts of such actions were judged by BLM's interdisciplinary resource team and the Area Manager to be less than significant, the District Manager held. Regarding appellant's protest of the process of public involvement, the decision stated that a 30-day review period was considered appropriate given the fact that a 60-day public review period was available for the draft GMP and several other occasions for public involvement (e.g., public hearings, meetings with concerned individuals) were provided.

In its statement of reasons (SOR), appellant argues that P.L. 100-225 required BLM to prepare a resource management plan and that such plan, by regulation, should have been accompanied by an EIS. Appellant quotes the statute, which provides:

[T]he Secretary shall develop \* \* \* separate general management plans for the monument and the conservation area which shall describe the appropriate uses and development of the monument

and the conservation area consistent with the purposes of this subchapter. The plans shall include but not be limited to each of the following:

(1) implementation plans for a continuing program of interpretation and public education about the resources and values of the monument and the conservation area;

(2) proposals for public facilities to be developed for the conservation area or the monument \* \* \*;

(3) natural and cultural resources management plans for the monument and the conservation area, with a particular emphasis on the preservation and long-term scientific use of archeological resources, giving high priority to the enforcement of the provisions of the Archeological Resources Protection Act of 1979 [16 U.S.C. 470aa (1988)] and the National Historic Preservation Act [16 U.S.C. 470 (1988)] within the monument and the conservation area. \* \* \* and

(4) wildlife resources management plans for the monument and the conservation area \* \* \*.

16 U.S.C. § 460uu-41 (1988).

Appellant argues that Congress intended that the GMP would be prepared in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1988), and refers to Senate Report No. 100, which states: "The Committee notes that in several instances the legislation [P.L. 100-225] refers to 'resource management plans' prepared by the BLM. These references refer to land use plans required by the Federal Land Policy and Management Act." S. Rep. No. 100, 100th Cong., 1st Sess. 12 (1987). BLM planning regulations at 43 CFR 1601.0-5(k) and the BLM Manual at § 1601 provide that the type of land-use plan required by FLPMA is a resource management plan, appellant states. Appellant acknowledges that NCA lands form only a part of the Rio Puerco Resource Area and that resource management plans are normally prepared for a designated BLM resource area, but contends that a resource management plan must be prepared for an area not comprising a single designated resource area where, as here, Congress specifically designates such an area for particular uses. In support, appellant quotes § 1601.09 of the BLM Manual, which states:

The Bureau Planning System applies to all BLM administered public land. This includes any public land areas subject to acts of Congress specifically designating lands for particular uses such as the Wild and Scenic Rivers Act, the Oregon and California Railroad Grant Land Act of 1937, National Trail Systems Act, the Wilderness Act, national recreation acts, and other public land areas subject to acts of Congress. \* \* \* A plan prepared by the

Bureau to fulfill a land-use plan requirement or a multiple-use management requirement of these or similar statutes is called a resource management plan.  
[Emphasis added.]

(SOR at 12-13). In addition, appellant notes that while BLM's GMP may contain some components of an activity plan, the GMP also contains the components of a resource management plan, as set forth at 43 CFR 1601.0-5(k) and BLM Manual § 1601 (Glossary). BLM was required to prepare a resource management plan and has, in fact, prepared a plan that contains the components of a resource management plan, NMWC states. It must, therefore, comply with all requirements for preparation of a resource management plan, among which is completion of an EIS (SOR at 16).

In support of this latter proposition, NMWC relies upon 43 CFR 1601.0-6 and BLM Manual § 1601.06. This regulation states:

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed plan and related environmental impact statement shall be published in a single document.  
[Emphasis added.]

BLM's failure to prepare an EIS in connection with the EL Malpais GMP is a clear violation of P.L. 100-225; the National Environmental Policy Act, 42 U.S.C. § 4332 (1988); FLPMA; BLM's planning regulations; and the BLM Manual, appellant urges.

In the alternative, NMWC contends that the GMP is a revision or substantial amendment to the November 1986 Rio Puerco Resource Management Plan and, as such, should have been accompanied by a supplemental EIS. Appellant argues further that BLM's FONSI should be reversed because it is not reasonable in light of the GMP's numerous specific actions, including grazing and wilderness recommendations.

In its answer, BLM states that P.L. 100-225 amended the 1986 Rio Puerco Resource Management Plan and that the GMP is an activity plan designed to implement P.L. 100-225. In support, the agency looks to the draft GMP of April 1990 on page 2-2. An activity plan is the most detailed, program-specific, and site-specific of BLM's three-tiered planning system, the agency explains. The first tier is the policy tier, which identifies goals, objectives, priorities, alternatives, etc. National policy is established in public laws, regulations, Executive orders, and in documents approved by the President, Secretary, and Director. State Director policy is developed through interpretation of national policy (BLM Manual § 1601.12). The second tier is the resource management plan tier, which sets forth the terms, conditions, and decisions that apply to BLM management actions. The third tier is the activity plan tier (Answer, Jan. 13, 1992, at 8).

An environmental assessment prepared in connection with the GMP analyzed relevant issues, alternatives, and potential impacts, BLM states, and these impacts were judged by the Area Manager to lack significance. The FONSI reached by the agency was reasonable, BLM maintains (Answer at 2).

References in Senate Report No. 100 to "resource management plans" address lands suitable for exchange or acquisition, BLM states. These lands would be identified in resource management plans prepared by the agency in accordance with sections 202 and 206 of FLPMA (Answer at 10).

BLM also suggests that BLM Manual § 1601.09 is not applicable in the instant case because P.L. 100-225 is distinguishable from the statutes (National Trails System Act, Wild and Scenic Rivers Act, Wilderness Act, etc.) set forth in § 1601.09. These statutes, unlike P.L. 100-225, do not require the preparation of a plan once the area has been designated by Congress (Reply, Feb. 14, 1994, at 3).

[1] Although the BLM Manual is not promulgated with the procedural protections accompanying regulations and, therefore, does not have the force and effect of law, BLM employees are obliged to follow its terms. Robert S. Glenn & DeLoyd Cazier, 124 IBLA 104, 108 (1992); Beard Oil Co., 105 IBLA 285, 288 (1988). BLM Manual § 1601.09 calls for the agency to prepare a resource management plan when it seeks to fulfill a congressional requirement for a land-use plan or multiple-use management plan. BLM acknowledges that it prepared an activity plan, rather than a resource management plan, in developing the GMP required by P.L. 100-225. We do not read the Manual to permit this.

The requirement for "separate general management plans" at 16 U.S.C. § 460uu-41 (1988) appears to be the type of congressional mandate contemplated by § 1601.09 of the Manual. BLM's statement that the statutes listed at § 1601.09 (National Trails System Act, Wild and Scenic Rivers Act, Wilderness Act, etc.) are distinguishable from P.L. 100-225 lacks support. Contrary to the agency's argument, both the National Trails System Act and the Wild and Scenic Rivers Act require the Secretary to prepare plans, after congressional designation, for development and use of a designated trail or river. 16 U.S.C. § 1244(e)-(f) (1988) and 16 U.S.C. § 1274(d) (1988).

Moreover, BLM's argument that P.L. 100-225 amended the Rio Puerco Resource Management Plan appears to be inconsistent with the three-tiered planning system described above. A statute passed by Congress is an unlikely vehicle to amend a BLM resource management plan. A BLM amendment to a resource management plan is such a vehicle. 43 CFR 1610.5-5.

A Federal Register notice at 54 FR 2234 (Jan. 19, 1989) suggests that BLM contemplated preparing its GMP as an amendment to the existing resource management plan, rather than as an activity plan. This notice, entitled "Intent to Amend the Rio Puerco Resource Management Plan," provides:

SUMMARY: The Rio Puerco Resource Area is preparing a General Management Plan (GMP) which will amend the Rio Puerco Resource

Management Plan (RMP, finalized November 1986) as it pertains to El Malpais Special Management Area (SMA). The GMP represents a greater level of detail in the planning process which is more site specific than the RMP and could be compared to an activity plan.

Prior case law gives an indication what type of plan is called for by legislation such as P.L. 100-225. In Resource Associates of Alaska, 114 IBLA 216 (1990), the pleadings indicate that BLM prepared a resource management plan, not an activity plan, to administer the Steese National Conservation Area. BLM's action was taken in response to 16 U.S.C. § 460mm-1(a) (1988), which requires the Secretary to develop a land-use plan for the area.

The record indicates that BLM incorrectly prepared an activity plan for the El Malpais National Conservation Area when a resource management plan was called for. Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. 43 CFR 1601.0-6. An EIS is required for such action. 42 U.S.C. § 4332 (1988). Appellant's protest of BLM's approval of the GMP for want of an EIS was wrongly dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Albuquerque District Manager is reversed.

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Will A. Irwin  
Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge